Because these stations are fixed in nature, higher in power, and similar in configuration to the proposed Northpoint technology, interference from Northpoint terrestrial stations is unlikely to occur. Moreover, the vast majority of incumbent terrestrial operations are located in rural areas. Rural areas have fewer local channels that must be carried via Northpoint terrestrial stations and therefore require fewer Northpoint terrestrial stations overall than urban areas, minimizing the possibilities for conflicts or incompatibilities. Finally, in areas where a possibility of interference may arise between Northpoint and incumbent operations, interference concerns may easily be allayed through the use of better receive or transmit antennas, adjusting of power, eliminating transmissions in affected frequencies,[19] or a combination of these techniques.

C. Northpoint's Technology Can Provide a Commercially Reasonable Reliable Service Area Even In the Presence of Existing Uses of the 12.2-12.7 GHz Band

Northpoint technology would be susceptible to interference from DBS operations in much the same fashion as the incumbent microwave systems. Due to precise engineering of its technology, Northpoint has shown by its experimental testing that it can maintain its relatively low power system with a reliable service area of 10 miles (16 km) without receiving signal degradation from a DBS transmission.[20] Similarly, with respect to the incumbent microwave

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[19] Pursuant to Section 101.109, the maximum authorized bandwidth for operational fixed systems in the 12.2-12.7 GHz band is 20 MHz. Thus, one potential means for eliminating interference without significantly altering the capacity of the Northpoint system is for the system to simply not transmit on frequencies overlapping with OFS usage in a particular area.

[20] Because Northpoint's testing utilized a very low transmit antenna height (52 feet AGL), the 10-mile service area is very conservative. In fact, Northpoint's estimate of a 10-mile service area

(Continued...)

systems, Northpoint will be able to engineer its systems so that subscribers do not suffer harmful interference from other terrestrial sources. Because the point-to-point systems operate on only a small portion (20 MHz or less) of the 500 MHz within the band, local systems can be engineered to eliminate interference on that portion of the band. These factors can also be improved through the use of better receive or transmit antennas, dynamic power control, or combinations of these changes.

V. THE COMMISSION SHOULD EXPEDITIOUSLY MODIFY ITS RULES TO ALLOW FOR SUBSIDIARY TERRESTRIAL USE OF THE DBS BAND

Significantly, only minimal rule modifications are necessary for the introduction of Northpoint's proposed terrestrial/DBS sharing in the 12.2-12.7 GHz band. Indeed, the many benefits of Northpoint's technology can be realized simply by modifying existing Section 101.147(p) of the Commission's Rules.[21] At present, this provision states that fixed microwave licensees may be licensed in the 12.2-12.7 GHz band, but only so long as they do not cause interference to operating DBS systems. Under Northpoint's proposal, detailed in Attachment A, the content of the existing subsection (p) would be preserved in its entirety and a new subsection (p)(1) would be added to govern the similar, non-interference use of the band by terrestrial DBS.

Consistent with other cases where subsidiary communications authorizations are issued and with the overriding need to protect DBS subscribers, Northpoint's revisions provide for secondary licensing for terrestrial DBS. Further, in order to facilitate arrangements whereby

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(...Continued)
includes approximately 19 dB of ground attenuation.

[21] 47 C.F.R. § 101.147(p).

DBS providers could engage in equity sharing arrangements with local broadcasters or other entities willing to construct facilities for terrestrial DBS signal carriage, Northpoint proposes that both DBS licensees and their affiliates be eligible for terrestrial DBS authorizations. This would allow cooperative arrangements in local areas by some, or all, of the DBS providers. For similar technical reasons, the proposed rule modification also requires coordination with all DBS licensees.

Northpoint notes that Part 101 also contains a number of other technical standards for operations in the 12.2-12.7 GHz band that are inapplicable for a terrestrial DBS offering. Accordingly, Section 101.147(p)(1) exempts such operations from Sections 101.103 (frequency coordination), 101.105 (interference protection criteria), 101.107 (frequency tolerance), 101.109 (emission bandwidth), 101.111 (emission limitations), and 101.115 (directional antennas).

Northpoint's proposed rules also subject subsidiary licensees to "must carry" obligations and retransmission consent by classifying such licensees as cable television operators for purposes of Section 76.56 of the Commission's rules. Thus, terrestrial DBS licensees would be required to carry the signals of any local broadcaster, but the broadcaster could elect retransmission consent and require the licensee to negotiate for the right to carry its local signal. Under the 1996 modifications to the compulsory copyright law, such regulations are feasible because a terrestrial DBS adjunct would fit within the definition of a "cable television system" for purposes of compulsory copyright.

VI. CONCLUSION

Northpoint urges the Commission to act rapidly to issue a notice of proposed rulemaking providing for terrestrial, shared use of the DBS band. As fully described above, Northpoint's

technology will further a number of important FCC and Congressional goals. Most significantly, by providing an efficient and effective solution to the DBS local television signal distribution problem, Northpoint's proposal would remove a major barrier to full and fair competition in the multichannel video program distribution marketplace, with resulting benefits to consumers. The system would also promote localism and address community needs, enable DBS providers to meet Congressionally-mandated, noncommercial programming requirements, permit the offering of a wide range of broadband data services, and provide a model for spectrum sharing in other frequency bands. Moreover, bringing all Americans the benefits of Northpoint's technology can be accomplished quickly and with only minor alterations to the Commission's rules. Northpoint accordingly urges the Commission, consistent with the policies discussed herein, promptly to issue the requested rulemaking proposal.

Respectfully submitted,

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ATTACHMENT A

A. Part 101 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 101 - FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: Sec. 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 524 and 303, unless otherwise noted.

2. Section 101.147(p) is revised to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(p) *12,000 to 12,700 MHz*: The Commission has allocated the 12,200 to 12,700 MHz band for use by the broadcasting-satellite service. Terrestrial use is authorized under the following circumstances:

(1) Broadcasting-satellite service licensees and their affiliates may utilize the 12,200 to 12,700 MHz band terrestrially on a secondary, shared, non-interference basis to transmit video entertainment material, data and other communications traffic related to the operation of the broadcasting-satellite system. Such applications must be fully coordinated with all possibly affected broadcasting-satellite service licensees prior to operation and are not governed by Sections 101.103, 101.105, 101.107, 101.109, 101.111, and 101.115 that cover the fixed microwave service. As a condition of authorization under this subsection, terrestrial licensees will be required to assume the obligation of cable television companies to carry local commercial televisions stations set forth in Section 76.56 of the Commission's Rules.

(2) Private operational fixed point-to-point microwave stations authorized after September 9, 1983, will be licensed on a non-interference basis and are required to make any and all adjustments necessary to prevent interference to operating domestic broadcasting-satellite systems. Notwithstanding any other provisions, no private operational fixed point-to-point microwave stations are permitted to cause interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the broadcasting-satellite service established at the 1983 WARC.

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